

September 21, 2000

Honorable Jane Garvey
Administrator
Federal Aviation Administration
U.S. Department of Transportation Dockets
Docket No. FAA-2000-7119
400 Seventh Street, S.W.
Room Plaza 401
Washington, D.C. 20590

Re: Emergency Medical Equipment NPRM
Docket No. FAA 2000-7119; RIN 2120-AG89

Dear Administrator Garvey:

The Office of Advocacy of the U.S. Small Business Administration has reviewed the proposed rule published by the Federal Aviation Administration for emergency medical equipment.¹ Advocacy is submitting comments on the FAA's compliance with the Regulatory Flexibility Act.

The Office of Advocacy was created in 1976 under Public Law 94-305 to represent the views and interests of small businesses in federal policy making activities. The Chief Counsel for Advocacy participates in rulemakings when he deems it necessary to ensure proper representation of small business interests. In addition, the Chief Counsel monitors compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.² By working with federal agencies, the Chief Counsel can ensure that the impact of regulations on small entities is analyzed to the extent required by law and good public policy.

The FAA has certified that this rulemaking would not have a significant economic impact on a substantial number of small entities. The agency completed an economic analysis to support its conclusion. Specifically, the FAA concludes that 60 small businesses will incur the annualized cost of an estimated \$18,300 each. According to FAA estimates, small businesses are 75 percent of the regulated entities but they assume only \$10.9 million of the total \$138.1 million cost of the rule.³ While some information has been provided regarding the cost estimates, the data on the cost attributed to small entities is not transparent, and therefore, the Office of Advocacy finds that the certification is inadequate.

¹ May 24, 2000, *Federal Register* at 33720.

² 5 U.S.C. § 601 et seq.

³ The FAA's "Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment" reports that the costs of the proposed rule would be \$138.1 million (\$95.6 million, discounted) and 80 operators would be required to comply. The number of total operators is only addressed under the cost discussion of training. The report also concludes that there are 60 small operators that will incur a total estimated cost of \$10.9 million, 7.9% of the total cost of the rule. For the purposes of the conclusion that small businesses will assume 7.9 percent of total costs, we assume this figure is not discounted.

Specifically, the Office of Advocacy has questions about the information provided regarding the characteristics of small operators, the cost estimates, and the threshold of what the FAA considers “significant economic impact.”

Characteristic of Small Businesses

The FAA has estimated that 60 small operators (75% of the industry) will be affected by this rulemaking. However, we have difficulty confirming this estimate absent the data source being cited by the FAA. Additionally, there is data from the Bureau of the Census that does not appear to be consistent with FAA data.

According to the Bureau of Census, scheduled air transportation firms totaled 715 employee firms.⁴ Of these, 452 firms have less than 20 employees; 192 firms have between 20 and 499 employees. Taken together small firms constitute 90% of the industry, not 75%. Only 71 firms have 500 or more employees.⁵ The source of FAA’s estimate and its data on the firms actually covered in the classification should be available to the public for review so that they can determine the accuracy of the data relied on by the FAA in assessing the impact of the rule on small entities.

While the FAA has certified that the rule’s costs will not have a significant economic impact on small businesses, the agency has not provided any information assessing its impact on small business revenues. Without the revenue information to compare to the costs, it is difficult to determine the impact. According to the Bureau of the Census data, average revenues are drastically different among firms of different sizes. The following table, prepared by the Office of Advocacy using Census data for SIC code 4512, provides data on revenues.

Size of Firm by No. of Employees	Total Revenue	No. of Firms	Average Revenue
<20	602,630,000	452	\$1,333,252
<500	6,925,027,000	644	\$10,753,147
500 +	137,115,253,000	71	\$1,931,200,746
All firms	144,040,280,000	715	201,454,937

The stark differences in revenue may explain why the FAA estimated that small firms would only bear 7.9% of the cost of the rule, i.e. an amount presumably in direct proportion to revenues, but where is the data that such a proportional relationship exists. Without providing the agency analysis, the agency has not given a factual basis for its certification as required by the Regulatory Flexibility Act.

⁴ The Bureau of Census estimates are for firms with employees in Standard Industrial Classification Code 4512 in 1997.

⁵ “Small business” is defined as less than 1500 employees for SIC code 4512, according to 13 CFR Part 121.

The FAA must better define the characteristics of small businesses regulated by this rule before certifying that the rule will not have a significant economic impact on small entities.

Cost Estimates

Several improvements should be made to the factual information provided for public scrutiny to support any finding by the agency that the rule will not have a significant impact on small firms. Overall, the agency has provided averaged and aggregated costs without a clear explanation of how the costs to small business have been calculated. While average costs for particular requirements are provided, no data or estimate is given for the difference in costs among different size businesses. For instance, will large carriers be able to buy defibrillators and medical kits at discount volume prices? Will small businesses likely pay retail prices? This illustrates why a general proclamation of aggregate costs for small firms sheds doubt on the agency's conclusions about small business costs.

The average cost estimates for this rulemaking are provided by the FAA for different elements of the rule: defibrillators, medical kits, training and fuel. The estimates provide some valuable information on the cost of equipment and training aids. However, it is unclear how these costs are attributable to small businesses affected by the rule, without data on the number of planes, employees, etc.

Defibrillators: The FAA estimates the average cost of the automatic external defibrillator to be \$3,500. However, no information has been provided as to what the cost will be for small firms, or if large firms will get volume discounts, etc.

Emergency Medical Kits (EMKs): The Office of Advocacy has similar concerns with whether the EMKs would cost more for small businesses. Moreover, the FAA determines that many firms are already in compliance, and that the 2,600 planes not in compliance could be disproportionately owned by small businesses. If this is the case, will small firms bear the brunt of the cost of this rule?

Training: The training costs need more explanation. According to the FAA, training on how to use the medical kits would be \$680. This includes \$500 for the course. That leaves \$180 for other costs, such as for training the company's trainer, administrative costs in obtaining the FAA approval of the company training program, downtime associated with training and possible facility costs.

Threshold for Significant Economic Impact

The FAA has determined that the rule will not have a significant economic impact because the costs do not exceed one percent of annual costs to small businesses. The agency does not however, provide any information or data that supports the dollar amount provided by the FAA. The Preliminary Regulatory Evaluation states on page 6, "[O]ne percent of the annual costs

Honorable
September 21, 2000
Page 4 of 4

(\$265,300, in 1998 dollars) to small operators is considered economically significant None of the 60 part 121 small entities would incur a substantial economic impact in the form of higher annual costs in excess of \$265,300, as a result of the proposed rulemaking.” The proposal is lacking any data to show how \$265,300 is one percent of annual costs incurred by small businesses.

The data from the Bureau of the Census implies that the revenues (and analogously costs) vary drastically among different size businesses. The businesses with fewer than 500 employees have revenues at only \$10 million. Would the rulemaking cost as much as \$107,591? (Obviously annual costs differ from revenue but the FAA’s source of average costs is not available. Therefore, revenues are being used as a substitute for discussion purposes.) Is this threshold too high for determining a significant economic impact on small firms? Averaging of costs among all small businesses may dilute significant impacts in certain sectors. Reasonably, the FAA should provide some scaled estimates of average annual costs to compare to the costs of this rulemaking for different size businesses.

By developing an analysis that accurately characterizes the small businesses and delineating more explicitly all the costs attributable to small firms, the FAA may be able to provide a factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this instance the data is insufficient to qualify as providing a factual basis for the FAA’s certification of this rule. More work is needed to permit the public to assess the accuracy of the agency’s evaluation.

If you need additional information, please contact Claudia Rayford Rodgers, at (202) 205-6533.

Sincerely,

Jere W. Glover
Chief Counsel for Advocacy

Claudia Rayford Rodgers
Assistant Chief Counsel